

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

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|---------------------------|---|-------------|
| UNITED STATES OF AMERICA, | * |             |
|                           | * |             |
| Plaintiff,                | * | 4:03-cr-105 |
|                           | * |             |
| v.                        | * |             |
|                           | * |             |
| MONTE BOYD DEVORE,        | * |             |
|                           | * | ORDER       |
| Defendant.                | * |             |
|                           | * |             |

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On April 15, 2003, a one-count Indictment was filed, charging Defendant Monte Boyd Devore (“Defendant”) with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On March 26, 2004, Defendant filed a motion to suppress evidence seized from a police search of his home. The Government resists the motion and a hearing was held on the motion on May 13, 2004. The matter is fully submitted.

I. BACKGROUND

On December 30, 2004, at approximately 6:00 p.m.,<sup>1</sup> officers with the Carlisle Police Department went to Defendant’s residence at 510 School Street in Carlisle, Iowa to execute an arrest warrant<sup>2</sup> for the Defendant. Upon approaching the main entrance to the home, Officers Taylor and Shepherd knocked on the door. Officer Shepherd testified that while waiting for an answer, he could

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<sup>1</sup> There exists a videotape in this matter which depicts a time of approximately 1900 hours. Testimony confirmed that the time on the videotape was approximately 43 minutes later than the actual time. For simplicity, the Court will reference the time reflected on the video tape, rather than the actual time, throughout this order.

<sup>2</sup> The arrest warrant was for charges unrelated to those in the present indictment.

hear an adult male in the basement of the home talking, children somewhere in the home, and a television. After receiving no response to their knocks, Officer Taylor entered the house and began to approach the voices coming from the basement. Officer Shepherd testified that Officer Taylor announced that police were present and that the Defendant came around the corner and met Officer Taylor at the bottom of the basement stairs. Officer Taylor placed the Defendant under arrest, handcuffed him, and began to escort him up the basement stairs. As Officer Taylor was escorting the Defendant up the stairs, the Defendant's girlfriend, Shannon Gilleland ("Gilleland") approached the officers and a struggle ensued. Gilleland was ultimately arrested for interference with official acts, possession of drug paraphernalia,<sup>3</sup> and other charges.

The Defendant and Gilleland were each placed in separate police cars. Gilleland was placed in the back of Officer Steve Corbin's patrol vehicle, which contained a video recording system. It is unclear precisely how long Gilleland had been handcuffed and in the vehicle prior to the commencement of the recording at approximately 18:58, though officer testimony indicated that she was in the vehicle only a very short time. Once the recording system was turned on,<sup>4</sup> the following depicts the course of events:

- 18:59 Gilleland complains that her hands are numb from the handcuffs. Officer Corbin adjusts the handcuffs and places Gilleland back in the vehicle.
- 19:02 Gilleland is back in the vehicle and sounds audibly upset. The camera is turned off at this point.
- 19:15 The camera is turned back on. Officer Corbin is heard talking to Gilleland's

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<sup>3</sup> When officers attempted to handcuff Ms. Gilleland, a methamphetamine pipe fell out of her hand.

<sup>4</sup> The recording system was controlled by Officer Corbin who could remotely turn the system on and off via a microphone attached to his uniform.

children inside the house.

- 19:18 The children's grandparents arrive to pick them up.
- 19:23 Gilleland is read her Miranda rights by Officer Shepherd.
- 19:26 Officer Corbin radios dispatch, discusses the struggle, and notes that Gilleland had a methamphetamine pipe and that the children said additional "stuff" was kept in a dresser drawer.
- 19:28 Officers decide to attempt to obtain consent to search the residence.
- 19:29 Officer Shepherd asks Gilleland for consent to search the home. Gilleland replies that she is not aware of anything in the house. Shepherd tells Gilleland that if there is anything [apparently referencing drugs and drug paraphernalia] in the house, "we need to get it out."
- 19:31 Officer Shepherd asks Gilleland again for permission to search the house. Gilleland asks if the house will be ripped up if she consents and Officer Shepherd informs her that searches are not like she might have seen on television. Officer Shepherd again asks for consent to search and Gilleland is quiet. Officer Shepherd and Gilleland continue to converse. Gilleland says she does not want to get the Defendant into trouble and Shepherd indicates that important decisions need to be made.
- 19:34 Shepherd states, "I'll ask you one more time, you can say yes or no, we won't break anything . . . usually we do a little dusting." Gilleland and Shepherd laugh and Shepherd states, "It's cold, we have to make decisions. If you give us permission . . . the sooner you give us permission the sooner we're out of here." Gilleland hesitates and replies, "I don't know."
- 19:36 Shepherd says, "I'll ask you one final time and we'll be done talking. Will you give me permission to look through the house." Gilleland expresses that her children are important to her and asks whether she'll get in trouble if drugs are found in the house.
- 19:37 Shepherd tells Gilleland that his report will reflect that she wanted any contraband out of the house. Gilleland says, "I want it out."
- 19:38 Shepherd asks a final time, "Then do you give me permission to get it out?" Gilleland replies, "Yeah, I don't want it back here again."

As is clear in the above recitation, Shepherd asked Gilleland seven times for consent to search over the course of approximately nine minutes. Shepherd's tone was conversational and non-threatening. Gilleland was calm throughout the exchange. At no point did Gilleland refuse consent to search, though it is clear that she was hesitant. Gilleland asked several questions of Shepherd throughout the exchange and sounded as though she were carefully considering whether to give

consent.

After receiving consent to search the home from Gilleland, consent to retrieve a marijuana pipe from a kitchen cabinet was obtained from the Defendant. Defendant refused any further search of the home. At 19:50, Officer Corbin drove to the Carlisle Police Department to drop off another officer. Gilleland remained in the back of Corbin's vehicle and then was taken back to the house. Gilleland was present while the search of the home was conducted and pointed out places where the officers should look for contraband. The search revealed drug paraphernalia and the firearms that are the basis of Defendant's present indictment. At no time during the search did Gilleland attempt to revoke her consent to search the house.

## II. ANALYSIS

The facts in this matter are generally undisputed. The only issue to be determined is whether Shannon Gilleland's consent was freely and voluntarily given to law enforcement, or whether it was coerced and thus, did not form a valid basis for the search of the home.

"Even when police officers have neither probable cause nor a warrant, they may search an area if they obtain a voluntary consent from someone possessing adequate authority over the area." *United States v. Chaidez*, 906 F.2d 377, 380 (citing *United States v. Matlock*, 415 U.S. 164, 171 & n.7 (1974); *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)). In determining whether consent is given voluntarily and as a result of free will, the Court must examine the totality of the circumstances. *See United States v. Beason*, 220 F.3d 964 (8th Cir. 2000) (citing *United States v. Beatty*, 170 F.3d 811, 813 (8th Cir. 1999)). In evaluating the totality of the circumstances, the Court must determine whether the consent was "the product of an essentially free and unconstrained choice by its

maker' rather than 'the product of duress or coercion, express or implied.'" *Chaidez*, 906 F.2d at 380 (quoting *Schneekloth*, 412 U.S. at 225). Factors to be considered include the characteristics of the accused as well as the details of the interrogation. *Id.* (citing *Schneekloth*, 412 U.S. at 225). The burden is on the government to prove voluntariness by a preponderance of the evidence. *See Chaidez*, 906 F.2d at 381.

Relevant factors in determining whether consent is voluntarily given include personal characteristics of the defendant as well as the environment in which the consent was given. Characteristics of the person giving consent to be considered are: age; general intelligence and education; whether an individual is intoxicated or under the influence of drugs when consent is given; whether consent was given after the individual was informed of either Miranda or the right to withhold consent; and whether, because of previous arrests, the individual was aware of the protections afforded to suspected criminals by the legal system. *See id.* at 381-82.

Relevant factors in examining the environment in which consent was given include: the length of the detention; whether there were any threats, physical intimidation or punishment by the police; whether the person consenting relied on any promises or misrepresentations made by the police; whether the consenting individual was in custody or under arrest when consent was given, the location of the consent, and whether any objection was made to the search. *Id.*

There is no question that Gilleland gave consent to search in this case. She specifically told Officer Shepherd that he could search the home and additionally assisted in locating contraband during the course of the actual search. There is also no question that Gilleland possessed authority over the area to be searched, *i.e.*, she lived in the home along with the Defendant and her two children. Thus,

the only relevant question is whether, given the totality of the circumstances, Gilleland's consent to search was voluntarily given. Gilleland was 29 years old at the time of the search and possessed a high school education. Despite having possessed a methamphetamine pipe at the time of her arrest, Gilleland did not appear to be under the influence of any substance, legal or illegal, at the time she gave consent. Indeed, Gilleland testified that she was sober when she agreed to permit the search of the house. Gilleland denies any prior contact with law enforcement and the video clearly indicates that Gilleland was provided with her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), prior to giving consent. Additionally, Gilleland was told at least once by Officer Shepherd that she could "say yes or no" to his request for consent to search.

There is no question that Gilleland was in custody at the time she gave consent to search the house. Gilleland's consent was given approximately 40 minutes after the first video-taped portion of events. Clearly, Gilleland had been handcuffed in the back of Officer Corbin's car for some period of time prior to the commencement of the tape, but it is unclear for precisely how long. Gilleland testified in the state court proceeding that she was mistreated by law enforcement, however, the videotape reflects that each of the officers who had contact with her were genial, polite, and non-intimidating. When Gilleland complained about the tightness of her handcuffs, they were promptly adjusted. Though it was a cold December evening, Gilleland testified that car's heater was on and that she was not cold or otherwise overly uncomfortable in the back of the patrol car. The only promise or representation made to Gilleland was Officer Shepherd's promise to note in his report that Gilleland wanted any illegal items out of her home. Officer Shepherd did not indicate to Gilleland that she would be in trouble should she refuse to give consent to search. Gilleland, however, indicated that she felt pressured to give

consent to get Officer Shepherd to “stop bugging [her].” Finally, it is clear from the record that Gilleland not only did not object to the search as it was taking place, but that she assisted the officers in their execution of the search.

With three important exceptions, the factors to be considered in the totality of the circumstances weigh in favor of a finding that Gilleland’s consent was freely and voluntarily given. Warranting further discussion, however, are the following factors: 1) Gilleland was in custody at the time of her consent; 2) Gilleland had been handcuffed and in custody for at least 40 minutes prior to her grant of consent; 3) Officer Shepherd told Gilleland that the primary reason for the search was to remove drugs and paraphernalia from the home, though there is some indication that the intent of the search was broader.

With regard to Gilleland’s custodial status, the Court of Appeals has held, “[T]he fact that a suspect is under arrest or in jail will not, standing by itself, preclude the grant of free and voluntary consent.” *United States v. Matthews*, 603 F.2d 48, 51 (8th Cir. 1979) (citing *United States v. Frye*, 548 F.2d 765, 770 (8th Cir. 1977)); *see also United States v. Frazier*, 560 F.2d 884, 889 (8th Cir. 1977) (citing *United States v. Watson*, 423 U.S. 411, 424 (1976)). Similarly, the fact that Gilleland had been detained for a relatively long period of time does not preclude a finding that her consent was voluntarily given. *See United States v. Becker*, 333 F.3d 858, 861 (8th Cir. 2003) (finding consent given after half hour lawful detention was voluntary even though close in time to point that detention became unlawful).

In this case, the length of time that Gilleland sat in the police car was in large part a function of waiting for the children’s grandparents to arrive to pick them up. Indeed, no more than ten minutes after Officer Taylor spoke to the grandparents, Officer Shepherd asked Gilleland the first time for

consent to search. The Court cannot say that 40 plus minutes of detention turned the environment in which Gilleland gave consent into an overly coercive one. *See generally id.*; *see also United States v. Garcia*, 197 F.3d 1223 (8th Cir. 1999) (two plus hour detention while awaiting drug dog not unreasonable).

Finally, the state court<sup>5</sup> placed particular emphasis on the fact that Officer Shepherd repeatedly indicated that he only wanted to search the house to get any illegal drugs and paraphernalia out, when his motivations were clearly broader. Of significant difference, however, between this case and the state court suppression hearing is the fact that Defendant here does not allege that Ms. Gilleland's arrest was illegal. Indeed, testimony at the hearing before *this* Court indicated that Gilleland's arrest was justified because she had committed a crime, *i.e.*, interference with official acts and possession of drug paraphernalia, in the presence of law enforcement officers while those officers were legally in her home executing an arrest warrant for the Defendant. Thus, the burden to prove Gilleland's consent was voluntarily is not so onerous as in those cases where the consent must be sufficiently an act of free will to overcome the taint of an illegal detention. *See Wong Sun v. United States*, 371 U.S. 471 (1963). The fact that Officer Shepherd may have had a desire to remove more than drugs and paraphernalia from the home is only weakly supported by the record. The Court cannot say that his indications to Gilleland that he desired to remove drug items from the home, without saying more, is any more coercive than had Officer Shepherd merely asked for consent to search the home without specifying

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<sup>5</sup> A motion to suppress was granted in Warren County, Iowa in relation to Defendant's state charges and based on the same facts here at issue. The Court was presented with a transcript of those proceedings, the Warren County judge's ruling, and additional testimony in the Court's own hearing on this matter.

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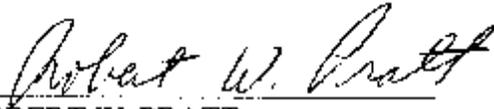
Fundamentally, the determination in this case turns on whether Gilleland's decision to give consent was an act of an individual who knew what she was doing and who had a reasonable appreciation of the nature and significance of her actions. *See United States v. Gipp*, 147 F.3d 680, 686 (8th Cir. 1998) (citing *United States v. Elrod*, 441 F.2d 353, 355 (5th Cir. 1971)). The Court finds no evidence before it that Gilleland's consent was anything other than a "free and unconstrained choice" or that Gilleland's "will ha[d] been overborne and [her] capacity for self-determination critically impaired." *See Schneckloth*, 412 U.S. at 225; *see also United States v. Mancias*, 350 F.3d 800 (8th Cir. 2003) (Defendant's consent to search voluntary where he was handcuffed, sitting in back of patrol car, not informed of Miranda rights, not under influence of drugs or alcohol, and where Defendant was mostly alert, cooperative and had one prior conviction, and no promises or representations were made by law enforcement). This conclusion is bolstered substantially by the fact that Gilleland assisted officers in the search of her home and at no point voiced any objection to the search.

### III. CONCLUSION

After careful consideration, the Court finds that Gilleland's consent to search was freely and voluntarily given and not the product of any force, threats, or coercion. Accordingly, the search of Defendant's and Gilleland's home was a consent search and the evidence seized therein is admissible. Defendant's Motion to Suppress Evidence is, therefore, DENIED.

IT IS SO ORDERED.

Dated this \_\_\_28th\_\_\_ day of May, 2004.

  
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ROBERT W. PRATT  
U.S. DISTRICT JUDGE